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JOSEPH F. SPANIOL, JR.
CLERK

NO. 87-1340

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

CITY OF PHILADELPHIA,

Petitioner

v.

DISTRICT COUNCIL 33, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by EARL
STOUT, as Trustee ad Litem; and EARL STOUT;
ALBERT JOHNSON; FRANCIS ROONEY; ROBERT LUCAS;
JAMES RAWLS; DONALD GALLIMORE; EDWARD SIMPKINS;
LEONARD TILGHMAN; ANN COHEN; GEORGE WROTEN; and
EARL WILLIAMS, Trustees of DISTRICT COUNCIL 33
MUNICIPAL WORKERS HEALTH AND WELFARE FUND,

Respondents

ANSWER IN OPPOSITION TO MOTION TO DEFER CONSIDERATION
OF PETITION FOR A WRIT OF CERTIORARI

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District Council 33, American Federation of State, County and
Municipal Employees, AFL-CIO, et al, Respondents herein, respectfully
urge your Honorable Court to refuse and deny Petitioner's Motion to
Defer Consideration of its Petition for a Writ of Certiorari presently
pending in this Court and to immediately act upon said pending Petition
and deny the same for the following reasons:

1. The Petition ~~for~~ a Writ of Certiorari filed by Petitioner,
City of Philadelphia, on February 3, 1988, was filed solely for
purposes of further delay and as another dilatory tactic, calculated

to frustrate Respondents right to collect the outstanding judgment against the City of Philadelphia in this matter, which judgment will inevitably have to be paid to Respondents' Health and Welfare Fund as a result of the City's breach of contract, as determined in the courts of Pennsylvania below.

2. The filing of the instant Motion to Defer Consideration by the City of Philadelphia is yet another instance and example of the unconscionable delay that the City of Philadelphia seeks to impose upon its largest municipal workers union in the collection of the outstanding judgment due for the health and welfare benefits that the City contracted to provide and has blatantly failed so to do.

3. The reasons advanced by the City of Philadelphia in support of its Petition for a Writ of Certiorari are frivolous, as has been addressed in Respondents' Brief in Opposition to the Petition for a Writ of Certiorari that was filed in this matter (which Brief of Respondents was filed with this Court on March 3, 1988), and the City's modus operandi in filing the Petition for a Writ of Certiorari in this Court in the first instance was strictly and solely for purposes of further delay in an effort to frustrate Respondents' ability to collect the outstanding judgment that is now due the District Council 33 Health and Welfare Fund.

4. To grant this present "Motion to Defer Consideration of Petition for a Writ of Certiorari" would only foster further unconscionable delay in the ultimate resolution of this matter, which has been the ongoing calculated methodology of the City of Philadelphia from the very outset of this litigation, which was initiated in January, 1983.

5. The City of Philadelphia's contention that the Supreme Court of Pennsylvania's Opinion of February 26, 1988 requires "evidentiary proceedings" is a blatant misrepresentation of fact and borders on intellectual dishonesty. The Opinion of the Supreme Court of Pennsylvania, which appears as the Supplemental Appendix to the Brief of Respondents in Opposition to Petition for a Writ of Certiorari of the City of Philadelphia, specifically and precisely directs the manner in which the lower court is to correct its findings and enter an Order that is consistent with those corrected findings. (SA-5-SA-6). There is no room for interpretation of the Supreme Court of Pennsylvania's very precise and specific directive in that regard, and there is absolutely no need for an evidentiary hearing, nor is there even the slightest suggestion or intimation in the Opinion of the Supreme Court of Pennsylvania that an evidentiary hearing be held by the lower court.

6. The corrected findings that the Supreme Court of Pennsylvania has directed the lower court to make simply relate to the correction of the monetary amount that is to be paid to Respondents; this involves a simple arithmetical computation, the substance of which has been prescribed and articulated by the Supreme Court of Pennsylvania in its Opinion; all the lower court need now do to correct its findings is to change the monetary amounts that are to be awarded to Respondents' Health & Welfare Fund, as it has been specifically directed to do by the Supreme Court of Pennsylvania in its Opinion of February 26, 1988.

7. The corrected findings to be made by the lower court do not involve any question or issue relative to alleged violations of explicit public policy of the Commonwealth of Pennsylvania. Therefore,

the issues that are presently before this Court on the pending Petition for a Writ of Certiorari in this matter have nothing whatsoever to do with the corrected findings that the Supreme Court of Pennsylvania, in its Order and Opinion of February 26, 1988, has directed the lower court to make, in any event.

WHEREFORE, for all of the foregoing reasons, Respondents respectfully urge this Honorable Court to refuse and deny the City of Philadelphia's Motion to Defer Consideration of the pending Petition for a Writ of Certiorari, and further urge this Honorable Court to promptly and expeditiously deny the City of Philadelphia's Petition for a Writ of Certiorari in this matter for all of the reasons advanced hereinbefore and in Respondents' Brief in Opposition to said Petition.

Respectfully submitted,

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Dated: March 17, 1988

CERTIFICATE OF SERVICE

I, ROBERT C. DANIELS, Esquire, a member of the Bar of the Supreme Court of the United States and counsel of record for District Council 33, AFSCME, et al., Respondents herein, hereby certify that, on March 17, 1988, pursuant to Rule 28 of the Rules of the Supreme Court of the United States, I served the proper number of copies of Respondents' Answer in Opposition to Motion to Defer Consideration of Petition for a Writ of Certiorari upon each of the following in the manner indicated below:

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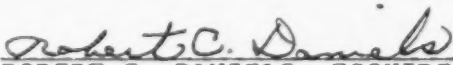
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Respectfully submitted,

Dated: March 17, 1988


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